In the High Court of Punjab and Haryana at Chandigarh

C.R. No.3319 of 2005
Date of decision:12-10-2006

State of Haryana .....Petitioner

Versus

Smt. Lajwanti .....Respondent

CORAM: Hon'ble Mr.Justice Vinod K.Sharma

Present: Mr.M.L.Saggar, Addl.Advocate General, Haryana for the petitioner
Mr.R.K.Gupta, Advocate, for the respondent.

VINOD K.SHARMA,J. (ORAL)

The present revision petition has been filed against the order dated 28-5-2005 passed by the learned Civil Judge (Sr. Divn.), Jind, vide which the objection petition filed by the State of Haryana– petitioner herein has been rejected.

The decree-holder Smt. Lajwanti filed a suit for possession claiming herself to be owner of land measuring 12 Kanals 5 Marlas. It was the case of the plaintiff-decree holder that the petitioner herein had taken possession of her property without her consent. As the State failed to give back the possession of her land, a notice under section 80 CPC was served on the petitioner-State calling upon it to

hand over the possession of the land. Since the State had failed to take any action on the said notice, the suit for possession was filed which was dismissed by the learned trial Court on 22-12-1993. However, the appeal filed by the plaintiff was allowed by the learned District Judge, Jind, vide order dated 19-12-1997. The operative part of the order passed by the learned lower Appellate Court reads as under:-

> "7. In view of the above discussion, it has to be held that the trial Court wrongly dismissed the suit of the appellant. Copy of Jamabandi Ex.P.1 clearly shows that it is Lajwanti appellant who is the owner of the suit land. It was not disputed by the learned Government pleader either that in the revenue record, the suit land is recorded in the ownership of the appellant. His contention, however, was that the respondent-State had acquired it. As stated above, the case for the appellant is that on merits also, the respondent-State had failed to prove that the suit land had been acquired. In this connection, it may be noted that it was for the respondent-State to have got proved the award regarding the acquisition of land, if any such award existed. But, as it is, no such award was got proved. The respondent-State did not produce even any certified copy of such award. However, learned Government pleader referred to Ex. D.1 which, it may be stated, is only an attested copy of an endorsed photo-copy of the award. In Dera Baba Lathurian and another Vs. The State of Punjab, 1990 P.L.J. 291, copy of certified copy had been produced in evidence after attestation put by the General Assistant to the Deputy Commissioner thereon. The Hon'ble High Court held that copy of certified copy put into evidence after it is attested to be true copy by

General Assistant to Deputy Commissioner cannot be received in evidence. In the case in hand, Ex.D.1 is not even copy of certified copy. As stated above, it is only an attested copy of an endorsed photo-copy of the award. The same, therefore, cannot be read into evidence and has to be ignored. In so far as Ex.D.4 is concerned, the same is also only a photo- copy of the mutation. It is neither certified nor even an attested one. Even otherwise, this document only shows that a mutation in respect of the suit land was entered into in favour of the Haryana State but it was never decided. In fact, it is mentioned at the top of Ex. D.4 that the mutation is still pending for decision. (INTKAL ZAIR FAISLA HAI). Thus even this document cannot be of any helpt to the respondent-State in contending that they had acquired the suit land. That being the position, it cannot be held simply on the basis of notifications under section 4 or section 6 of the Land Acquisition Act that the suit land stood acquired by the respondent-State.

8. As stated above, it was not disputed by the respondent-State either that it was the appellant, Lajwanti, who was original owner of the suit land. Copy of jamabandi Ex.D.1 shows that even during the year 1984-85, the suit land continued to remain in the ownership of the appellant. The plea of the respondent-State that they had acquired the suit land in the year 1956 has not been proved. That being so, it is clear that the appellant Lajwanti, continued to remain owner of the suit land, and as such, she is entitled to get possession thereof from the respondent-State on the basis of the ownership in respect thereof. The appeal is, therefore, accepted. The impugned judgment and decree of the learned trial Court

> are set aside and a decree for possession of the suit land in favour of the appellant-plaintiff on the basis of being its owner is passed. The appellant shall also be entitled to the costs throughout. Decree-sheet be prepared accordingly and file be consigned to the record room."

The Regular Second Appeal filed by the State against the said order was dismissed and the Special Leave Petition also met with the same fate.

In the execution application, objections were filed by the petitioner-State herein alleging that the decree was obtained by the decree-holder by playing a fraud on the State as she failed to disclose that in pursuance to the acquisition of land, an award was passed and thereafter the possession was taken and thus in view of this it was claimed that the decree obtained by fraud is nullity and, therefore, was not executable. The learned executing Court dismissed the objection petition by observing as under:-

> "19. As a matter of fact, this Court is only the executing Court and has to execute the decree passed by the Court of learned District Juge, Jind, which has been upheld upto the Hon'ble Supreme Court of India. It is the settled proposition of law that the executing Court cannot go behind the decree. The executing Court has no jurisdiction to modify or vary the decree unless it is shown that the decree is without jurisdiction or is otherwise void. It is also the bounded duty of the executing Court to execute the decree and merely because frivolous and vexatious objections are filed with the

intention to delay and defeat the execution of the decree. It is also further settled proposition of law that under Section 47 of the CPC, the execution of the decree can only be avoided when it is found to be without jurisdiction, void ab initio or nullity or inexecutable being passed in ignorance of law or being rendered inexecutable by new enactment of law. The decree has to be executed if passed by a competent court of jurisdiction and attained finality. The decree cannot be defeated merely by raising the technical objections. It has also been observed by the Hon'ble Punjab and Haryana High Court that the executing Court cannot go behind the decree. A decree in sum and substance is the declaration of right or liability conferred by the substantive law because the decree holder has been able to prove all the facts which constitute that right.

20. With the above observations and discussion and after placing the reliance upon all the authorities referred by the learned counsel for the decree-holder, the objection petition has been filed in order to prolong or delay the execution proceedings. It is false and frivolous and is devoid of merits. This Court has considered all the submissions made by the learned Govt. Pleader for the objectors/JDs but have been found to be untenable, without any force and merits. While concurring with the arguments advanced by the learned counsel for the decree holder, the objection petition being devoid of merits stands dismissed with no order as to costs."

Mr. M.L. Saggar, Additional Advocate General, Haryana, appearing for the petitioner-State by placing reliance on a judgment of

the Hon'ble Supreme Court in the case of **S.P. Chengalvaraya Naidu (dead) by L.Rs Vs. Jagannath (dead) by L.Rs and others, AIR 1994 SC 853** contended that as the decree obtained by the decree-holder-respondent was an outcome of fraud, therefore, it was incumbent upon the trial Court to have considered the objections filed by the State and recorded a finding on the same. The Hon'ble Supreme in the said judgment was pleased to hold as under:-

> " The courts of law are meant for imparting justice between the parties. One who comes to the Court, must come with clean hands. It can be said without hesitation that a person whose case is based on falsehood has no right to approach the Court. He can be summarily thrown out at any stage of the litigation. A litigant, who approached the Court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party."

Learned counsel for the petitioner further placed reliance on a judgment of this Court reported as **The Chandigarh Primary Co-operative Agricultural Devp. Bank Ltd. Vs. The State of Punjab and others, (2005-2) PLR 371** and the judgment of Karnataka High Court in **A Muniswamy and another Vs. Smt. Selvi, 2002 A I H C 3045** to contend that fraud vitiates all proceedings and, therefore, the impugned order is liable to be set aside.

I have considered the contentions raised by the learned

counsel for the petitioner and find that the judgments relied upon by the petitioner-State have no relevance to the facts of the present case. As already observed, the basis of alleged fraud was within the knowledge of the petitioner when the appeal was pending before the learned District Judge i.e. the Ist. Appellate Court. In spite of the positive stand taken by the petitioner that the land had been acquired and the decree-holder was not the owner thereof, the learned lower Appellate Court decreed the suit by holding that the decree holder being owner of the property in dispute was entitled to possession thereof. The Regular Second Appeal against the order of the learned lower Appellate Court was dismissed and the SLP also met with the same fate. Once the Court had failed to look into the allegations of the petitioner-State and rejected its stand by passing a detailed judgment, it was not open to the petitioner-State to contend that the decree has been obtained by the decree-holder respondent by fraud. No new material has been brought on record to show as to how the fraud was played. The learned executing Court, therefore, in these circumstances, was right in coming to the conclusion that it was not open to the executing Court to go behind the decree and rejected the objections filed by the petitioner-State.

No merit.

Dismissed.

October 12, 2006 **(VINOD K.SHARMA)**
'dls' **JUDGE**